

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.322/95

Date of order: 13/12/99

- 1. Krishna Kumar Goyal, S/o Shri J.P.Goyal, R/o 164-A, W.R.S.Cclony, Kota, presently posted as Fitter, Chief Works Manager, W.Rly, Kota.
 - 2. Rajendra Singh Yadav, S/o Shri I.S.Yadav, R/o 461-A, W.R.S Cclony, Kota, presently posted as Fitter, Chief Works Manager, W.Rly, Kota.
- ...Applicants.

Vs.

- 1. The Union of India through General Manager, W.Rly, Churchgate, Mumbai.
 - 2. The Chief Works Manager, Western Raily, Kota.
- ...Respondents.

Mr.R.N.Mathur) - Counsel for applicant.

Mr.Vinod Goel)

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicants make a prayer to direct the respondents to conduct thorough enquiry in the malpractices adopted during the examination and to declare the entire examination result as void and further directions were sought that the applicants be declared successful in pursuance of notification dated 31.7.94.

2. Facts of the case as stated by the applicants are that respondent No.2 issued a notification dated 2.7.94 for conducting selection test for the post of Apprentice Mechanic for 18 posts. A list of 106 eligible persons was declared vide Annx.A1 mentioning them as eligible. But this list was modified vide order Annx.A2 dated 18.4.95. It is stated that by this order the persons ineligible earlier were made eligible in the said selection test. The applicants were appeared in the said selection test but were not declared successful. It is stated that the examination was not conducted fairly as ineligible candidates were allowed to appear in the examination and the result was not declared on the basis of merit. Therefore, the applicants filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, all the allegations levelled against the respondents have been denied. It is stated that the modified eligibility list was declared in pursuance of the Railway Board's order. It is also stated that the applicants failed to establish the fact of malpractices/favouritism with any employee and the applicants never protested either before or after the examination. It is also stated in the reply that the paper was not lengthy as it contains number of objective

type of questions. It is also stated that successful candidates are listed in the order of merit/seniority after the selection procedure was over but in the instant case the selection process was not over as no viva voce was conducted so far. No example of any kind of favouritism was cited by the applicant. Therefore, this O.A is devoid of any merit which is liable to be dismissed.

4. Heard the learned counsel for the applicant and also perused the whole record, including the written submissions of the respondents.

5. Admittedly the applicants have appeared in the selection test but according to the respondents no protest was made by the applicants before the examination or after the examination. It is settled law that if a person has participated in the process of selection he is estopped to challenge the same.

6. In Om prakash shukla Vs. Akhilesh Kumar Shukla & Ors., AIR 1986 SC 1043 the Lordships' of Hon'ble Supreme Court had held that the petitioner having appeared for the examination without protest and filed petition only after realisation that he would not succeed in the examination should not have been granted any relief in the petition.

7. In Madan Lal & Ors Vs. State of Jammu & Kashmir & Ors., (1995) 3 SCC 486, their Lordships of the Hon'ble Supreme Court observed as follows:

"It is now well settled that if a candidate takes a calculated chance and appears at the interview, then only because the result of the interview is not palatable to him, he can not turn round and subsequently contend that the process of interview was unfair or the Selection Committee was properly constituted."

8. In the case of University of Cochin Vs. N.S.Kanjoo Jamma & Ors.etc., 1997(2) SLR 606, the Hon'ble Supreme Court pointed out that the first respondent also had applied for and sought selection but remained unsuccessful. Hence, the Court held that having participated in the selection, she was estopped to challenge the correctness of the procedure adopted by the Selection Committee.

9. The same view has been taken by the Himachal Pradesh High Court (D,B) in CWP No.312 of 1989 decided on 22.5.97 which runs as follows:

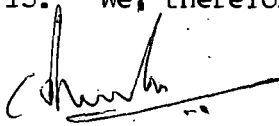
"A person who had participated in the process of selection for promotion and having failed therein can not challenge the promotion policy principle of estoppel applicable - validity of the procedure adopted for the purpose of granting promotion can not be challenged."

10. It also appears that the applicants have directly approached this Tribunal for redressal of their grievances without exhausting alternative remedy available to them. No representation was filed by the applicants and no complaints was made against the alleged malpractices/favouritism to the higher authorities.

11. The law on the subject is that if an order has been passed to set at naught the entire selection process, it has to conform to the least of reasonableness and fairness. The order should be passed bonafide and must be passed on some concrete and tangible material and certainly it cannot be the outcome of an arbitrary act imbued with subjectivity. The Courts certainly have the power and authority to consider the efficacy and sufficiency of the grounds and the material in the wake of which an order of cancellation came into being.

12. In the instant case in view of the legal position as referred to above and in view of the fact that the applicants have not even filed a representation before approaching this Tribunal, the applicants have no case for interference by this Tribunal and this application is devoid of any merit.

13. We, therefore, dismiss this O.A with no order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).